



AN ACT REVISING AND CLARIFYING THE MILK CONTROL LAWS; TRANSFERRING CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL; AMENDING SECTIONS 81-1-101, 81-23-101, 81-23-103, 81-23-104, 81-23-201, 81-23-202, 81-23-203, 81-23-204, 81-23-302, 81-23-303, 81-23-401, 81-23-402, 81-23-404, 81-23-405, AND 81-23-406, MCA; REPEALING SECTIONS 81-23-304 AND 81-23-305, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 81-1-101, MCA, is amended to read:

**"81-1-101. Definitions.** Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102, except as provided in Title 81, chapter 23.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31."

**Section 2.** Section 81-23-101, MCA, is amended to read:

**"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

(b) (i) "Class" refers to the classes of utilization of milk that the ~~department shall define~~ board defines by rule.

(ii) In adopting rules under this subsection (1)(b), the ~~department~~ board shall use the current definitions of classes of utilization of milk that are found in Title 7 CFR, part 1000.40, except that the ~~department~~ board may combine any of the classes of milk provided for in the federal definitions into a single class.

(c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(e) (i) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors.

(ii) The term, ~~however, excludes~~ does not include a person purchasing milk from a dealer licensed under this chapter; for resale over the counter at retail or for consumption on the premises.

(f) "Licensee" means a person who holds a license from the department board.

(g) "Market" means an area of the state designated by the department board as a natural marketing area.

(h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(j) "Producer" means a person who produces milk for consumption in this state, ~~selling and sells~~ it to a distributor.

(k) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(l) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(m) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department board may assign new milk products not provided for under 7 CFR, part 1000.40, to the class that the department board considers proper."

**Section 3.** Section 81-23-103, MCA, is amended to read:

**"81-23-103. General powers of ~~department~~ department and board.** (1) The department board shall

supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) ~~The department~~ department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

~~(2)(3) The department shall investigate~~ department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and ~~shall conduct hearings on any subject pertinent to the administration of this chapter. The department~~ by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. ~~The department~~ department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the ~~department~~ department at its offices. The ~~department~~ department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities."

**Section 4.** Section 81-23-104, MCA, is amended to read:

**"81-23-104. Rules and orders.** The ~~department~~ board may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the ~~department or the~~ board. A rule or order ~~shall~~ must be posted for public inspection in the main office of the department for 30 days, and a copy ~~shall~~ must be filed in the office of the department. A copy ~~shall~~ must also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which ~~shall~~ must be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the

office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law."

**Section 5.** Section 81-23-201, MCA, is amended to read:

**"81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers.** In any market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk ~~which he~~ that the person knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The ~~department~~ board may decline to grant a license or may suspend or revoke a license already granted; upon due cause and after hearings."

**Section 6.** Section 81-23-202, MCA, is amended to read:

**"81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department; as provided in 81-22-202; or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the ~~department~~ board. The annual fee for the license ~~from the department~~ is \$2<sub>1</sub>, and is due before July 1<sub>1</sub>, and must be deposited by the department in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the ~~department~~ board shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

- (a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;
- (b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;
- (c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department board shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department board and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department board upon payment of a delinquency fee equal to 30% of the assessment that was due.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The department board may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

**Section 7.** Section 81-23-203, MCA, is amended to read:

**"81-23-203. Application for licenses.** An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared by the department department and containing the information required by the department board. The application must certify the

applicant to be the holder of all licenses required by the department board for the conduct of the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application must be accompanied by the license fee required to be paid."

**Section 8.** Section 81-23-204, MCA, is amended to read:

**"81-23-204. Declining, suspending, and revoking licenses -- penalties in lieu of suspension or revocation.** (1) The department board may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board ~~or department~~, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department board may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department board may assess a civil penalty not to exceed \$500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the ~~department or board~~. A penalty may not be assessed until after the cause of the penalty has been upheld following the notice and hearing requirements of subsection (1). If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department board shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty ~~shall~~ must be construed as civil and not criminal in nature. Any ~~moneys~~ money received by the department board as a result of collection of civil penalties ~~shall~~ must be paid into the state special revenue fund as provided by 81-23-403."

**Section 9.** Section 81-23-302, MCA, is amended to read:

**"81-23-302. Establishment of minimum prices.** (1) The board shall, by adopting rules, fix minimum producer prices for classes of utilization of milk as defined by the department board.

(2) The board shall establish prices by means of flexible formulas that must be devised so that the formulas bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of

production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in the department's employment indicate will or should be shown at the hearing so that all interested parties will have an opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider so that all interested parties will have an opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state if milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies; as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend a rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and



consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by order to establish the arrangement. An order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be ~~enforced and~~ audited for compliance by the department and enforced by the board. An enforcement action is subject to the provisions of [section 16]."

**Section 10.** Section 81-23-303, MCA, is amended to read:

**"81-23-303. Rules of fair trade practices.** The ~~department~~ board may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302(11), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

- (1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;
- (2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;
- (3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;
- (4) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government."

**Section 11.** Section 81-23-401, MCA, is amended to read:

**"81-23-401. Entry, inspection, and investigation.** The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The ~~department~~ department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the ~~department~~ department, are necessary to administer this chapter."

**Section 12.** Section 81-23-402, MCA, is amended to read:

**"81-23-402. Reports of dealers -- accounting system -- records.** (1) (a) The department may require licensees to file reports with it ~~reports~~ at reasonable or regular times ~~which that the~~ department board may require, showing the licensee's production, sale, or distribution of milk and any information considered necessary

by the ~~department necessary which~~ board that pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the ~~department~~ board may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the ~~department~~ board.

(b) The department and the board may request only the records necessary for establishing milk prices pursuant to this chapter. The department shall provide licensees with information concerning procedures a licensee may use to assert a claim of confidentiality with respect to constitutionally protected information that must be submitted to the department, such as trade secret or proprietary information.

(2) The ~~department~~ board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records ~~which~~ that the ~~department~~ board considers necessary for the proper enforcement of this chapter."

**Section 13.** Section 81-23-404, MCA, is amended to read:

**"81-23-404. Cooperation with other governmental agencies.** In order to secure a uniform system of milk control, the ~~department~~ board shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the ~~department~~ board may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under

this chapter."

**Section 14.** Section 81-23-405, MCA, is amended to read:

**"81-23-405. Violations made misdemeanors -- penalties.** (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department board as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding \$600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, ~~shall~~ must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter."

**Section 15.** Section 81-23-406, MCA, is amended to read:

**"81-23-406. Additional remedies.** The department board may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department board may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department board may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department ~~of livestock~~, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department board may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court."

**Section 16. Appeal of action or decision.** An entity receiving notice of a violation of a provision of this chapter may within 60 days of receiving the notice from the department or board submit a request to the board

for a contested case proceeding pursuant to Title 2, chapter 4, part 6. Upon receiving a request, the board shall appoint a hearings examiner to conduct the hearing and issue a proposal for decision. The board shall issue a final decision within 90 days of receiving the proposal for decision.

**Section 17. Repealer.** Sections 81-23-304 and 81-23-305, MCA, are repealed.

**Section 18. Codification instruction.** [Section 16] is intended to be codified as an integral part of Title 81, chapter 23, part 4, and the provisions of Title 81, chapter 23, part 4, apply to [section 16].

**Section 19. Effective date.** [This act] is effective July 1, 2009.

**Section 20. Termination.** [Sections 1 through 16] terminate June 30, 2011.

- END -

I hereby certify that the within bill,  
SB 0286, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

SENATE BILL NO. 286

INTRODUCED BY T. BROWN, SALES, ZINKE, RIPLEY, BALES, GEBHARDT, J. PETERSON, BLACK,  
HINKLE, STEINBEISSER, DE. BARRETT, HOVEN

AN ACT REVISING AND CLARIFYING THE MILK CONTROL LAWS; TRANSFERRING CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL; AMENDING SECTIONS 81-1-101, 81-23-101, 81-23-103, 81-23-104, 81-23-201, 81-23-202, 81-23-203, 81-23-204, 81-23-302, 81-23-303, 81-23-401, 81-23-402, 81-23-404, 81-23-405, AND 81-23-406, MCA; REPEALING SECTIONS 81-23-304 AND 81-23-305, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.